

**TESTIMONY BEFORE THE SENATE ENERGY & TECHNOLOGY COMMITTEE
ON BEHALF OF
ENERGY MICHIGAN**

May 4, 2016

Laura Chappelle

Introduction: Senator Nofs, Vice Chairman Proos, and members of the Committee. Thank you for the opportunity to present testimony today on behalf of Energy Michigan. As this Committee knows, Energy Michigan has a thirty-year history in the state representing Michigan Alternative Electric Suppliers, Independent Power Producers and Advanced Energy Industries. Energy Michigan also represents customers who have an active interest in energy cost, provisioning and options, as reliable and reasonably priced energy is at the forefront of these customers' needs. In this regard, Energy Michigan has been long-time supporters of competitive options for energy procurement, believing that fair and balanced competition in the state drives innovation, benefits ratepayers and maintains healthy utilities.

Overall Perspective: While we appreciate Senator Nofs' stated purposes of SB 437(S-2), Energy Michigan opposes SB 437(S-2) in its current form, as the actual language of the bill in several key areas does not support its proposed purpose. In particular, there are three main areas of concern to Energy Michigan:

1. SB 437(S-2) does not maintain electric choice for most, if not all, non-utility AESs.

Energy Michigan strongly supports the Governor's and Senator Nofs' stated purpose of maintaining the 10% cap on electric choice. However, SB 437(S-2) will only allow utility-owned AESs to effectively operate within the 10% cap because they will be the only providers able to meet the bill's new resource adequacy requirements. Such a construct will not provide additional reliability, and unfairly – and potentially in an unlawful manner – places a preference on in-state providers at the expense of those deemed to be out-of-state.

The new requirements for AESs to continue providing electric choice service are flawed for several reasons:

- **Reliability Not Affected:** Load limitations on AESs do not change reliability for any LSE within a MISO zone in Michigan;
- **12 Year Requirement:** The bill imposes a 12-year capacity demonstration on AESs, cooperatives and municipal utilities if LCR (Local Clearing Requirement) capacity approaches a shortage, but places no such restrictions on utilities;
- **Unequal Flexibility:** Municipal utilities and cooperatives are allowed to aggregate load to meet this discriminatory construct, but the bill does not allow AESs to do the same;

- **10 Year Fee:** The bill imposes a significant, 10-year trailing capacity charge for new electric choice customers that functions as nothing other than a punitive, new method of stranded cost collection, despite both Consumers Energy and DTE having received a combined **\$125 million** additional revenue for net stranded costs and **\$2.2 billion** in securitization since 2000.
- **Barrier to Markets:** SB 437(S-2)'s resource adequacy construct is designed to essentially prohibit an AES's use of the same wholesale market that our traditional utilities have routinely utilized for years, if LCR capacity approaches a shortage. The bill is structured so as to allow AESs to purchase some of their "proportional share" of LCR capacity from a future MISO auction, but only if the auction covers *two* Planning Years. Of course, the current MISO auction only covers *one* Planning Year, and does not assign locational resources to specific Load Serving Entities. So the use of the present MISO auction, a well-developed and non-discriminatory market, thereby becomes impossible for AESs.
- **Preferential Treatment:** SB 437(S-2) does not impose any conditions on traditional utilities regarding their use of the MISO auction to acquire resources.

Legal Obstacles: These are only a few examples that point to the unnecessary and discriminatory treatment of AESs and their customers under this bill. The fact is that the bill places a preference on one subset of similarly-situated companies that operate both in the state and in the federally-regulated wholesale market – in this instance, in-state, utility-owned AESs – at the expense of out-of-state AESs. In doing so, it potentially raises the same violations of the federal Commerce Clause that the federal courts warned Michigan about regarding the preferential treatment of in-state renewable resource providers in PA 295 of 2008. As Judge Richard Posner of the Seventh Circuit Court of Appeals stated, "*Michigan cannot, without violating the Commerce Clause of Article 1 of the Constitution, discriminate against out-of-state renewable energy.*"

Alternative Constructs Do Exist: If a new resource adequacy construct is needed, then Energy Michigan supports the amendments offered by the Grand Rapids Chamber that would allow all Michigan Load Serving Entities (LSEs) a competitive market through which they can procure capacity resources while ensuring reliability is preserved. The three-year auction is being created by MISO for retail choice states within MISO. The creation of the three-year capacity auction would include a "safety net" that would allow the Michigan PSC, after a contested case, to increase resource adequacy requirements on LSEs in any year during which capacity is unavailable.

Energy Michigan believes the amendments adopting this three-year capacity auction will result in the fair, balanced, transparent and non-discriminatory treatment of all electric providers in the state and will achieve the reliability goals that are intended in the bill.

2. SB 437(S-2) does not contain a fair and transparent IRP process that allows true competitive bidding and Commission consideration of third-party alternatives.

Energy Michigan agrees with several interested parties that, as drafted, SB 437(S-2)'s IRP provisions do not create an open, transparent process that can be trusted to fairly and cost-effectively identify, plan and possibly build the right amount and type of capacity resources needed for the state. Of significance is the elimination of the 50/50 split in current law which allows independent power producers (IPPs) to develop in the state, thus leaving no direct avenue for IPPs to propose cost-effective energy proposals to the Commission. As a result, IPPs will have no assurances that non-utility proposed or owned projects can be developed in the state outside of utility approval.

Other concerns regarding the IRP include:

- **Lack of Quality Criteria:** Creation of the RFPs and review of their results outside of "best practices" recognized by other states;
- **No Neutral Administrator:** Lack of a third-party administrator for both RFP issuances and review;
- **No Follow Through:** Lack of real use of the RFP results to allow the most competitive, cost-effective and reliable resource to be chosen, as the RFP results only "inform" the utilities about their IRP;
- **Restricted Ownership:** The provision in Section 6t(13)(b) that mandates that the product of the competitive bidding process for new generation be owned by the utility imposes unnecessary rigidity and removes incentives for third-party resource providers, as well as the option for creative ownership and operating arrangements with the utility.
- **Questionable Bypass:** An "IRP bypass" that appears to be structured to allow regulated utilities to "self-deal" with affiliates and other in-state providers outside of the structure of a contested IRP case process, to the potential detriment of Michigan customers and other interested providers.

Energy Michigan supports the amendments offered by other concerned, interested parties that will ensure that the IRP process is open, fair, and truly competitive.

3. SB 437(S-2) will not lead to affordable rates for Michigan ratepayers.

Energy Michigan continues to have concerns with numerous provisions in SB 437(S-2) that will in all likelihood, continue to result in rate increases for Michigan customers.

Some provisions of significant concern to Energy Michigan include:

- **Projected Decoupling:** Allowing revenue decoupling, especially allowing the utilities to use "projections" in doing so;
- **External Trackers:** Broad language to allow general rate trackers for utilities outside of a rate case;
- **More Frequent Rate Increases:** Shorter rate case periods for complicated cases – previously reduced from 18 months to 12 months and now to 10 months, placing undue burdens on interested parties in Commission rate cases, at the expense of customers' best interests;
- **Restricted Competition:** Lack of true competitive bidding for new capacity purchases and generation resource developments by the utilities;
- **Change to IPP Allowance:** Removal of the statutory allowance for Independent Power Producers to develop in the state;
- **Insufficient Commission Review:** Lack of the ability for the Commission to review and approve competitive solicitations for needed energy or capacity in the IRP provision; and

Energy Michigan continues to be concerned about the significant rate increases that have occurred since 2008, when the retail choice market was limited to 10%. Since then Michigan ratepayers have seen approximately 50%, 40% and 29% rate increases for Consumers Energy's residential, commercial and industrial customers, respectively, and 63%, 29% and 20% for DTE Electric's.

We fear that the provisions contained in the current version of SB 437(S-2) will further narrow and finally eliminate the 10% electric choice market, and further restrict, if not eliminate, competitive and non-utility-proposed energy supply options, both to the detriment of Michigan retail rate customers.

Participation in Process: We appreciate the opportunity to provide this testimony and request your consideration and adoption of the suggested amendments to SB 437(S-2).

Practical Context of SB 437 (S-2)

1. ***If Shortage of LCR:*** If there is a shortage of Local Clearing Requirement (LCR) capacity resources in a Michigan zone, under SB 437 the utilities will end up short of LCR capacity.
 - Under Sec. 6w (3) and 6w (6) an AES will end up with *only* the load its LCR capacity can support.
 - Since the zone *in total is short* and all load ends up *somewhere*, the utility ends up with the shortage of LCR capacity compared to load.
2. ***If No Shortage of LCR:*** If there is sufficient LCR capacity in total in a Michigan zone, current MISO rules and tariff assure that all Load Serving Entities in the zone will have access to sufficient LCR.
 - With sufficient LCR capacity, the *current MISO auction apportions* a sufficient amount to the zone, which is used to serve all load in the zone
3. ***Relevance to Reliability:*** SB 437 is not relevant to planning or operational supply/demand reliability in a zone. It does not increase or decrease reliability for any LSE.
 - In MISO, *all resources to serve all customer load*. That's the *fundamental principle* of a Retail Transmission Organization (RTO). This has been in effect since 2005.
 - Sharing of resources saves money for all. Separation increases costs.
 - All LSEs in a zone *receive the same* reliability, and *all zones* interconnected by sufficient transmission receive the *same* reliability.
4. ***Understatement of Reserve Margins:*** In its presentation to the Committee, MISO omitted substantial capacity in the planning stages (about 25 GW), which it has reported in other documents; and thus future reserve margins are understated by about 18%.
 - MISO future projections are performed for *specialized purposes* for the North American Electric Reliability Corporation (NERC), MISO's governing body.
 - | | | | |
|------------------------|-----------|---|---|
| Peak load | projected | } | |
| Generation Retirements | projected | } | |
| Generation Additions | static | } | <u><i>Future always looks "short"</i></u> |

UNITED STATES DEPARTMENT OF AGRICULTURE

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
FOR THE YEAR 1904

WASHINGTON: GOVERNMENT PRINTING OFFICE
1905

THE COMMISSIONER OF THE GENERAL LAND OFFICE
HAS THE HONOR TO ACKNOWLEDGE THE RECEIPT OF THE

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
FOR THE YEAR 1904, AND TO STATE THAT THE SAME HAS BEEN
FORWARDED TO THE SECRETARY OF THE INTERIOR.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND THE SEAL OF THE DEPARTMENT OF AGRICULTURE,

AT WASHINGTON, D. C., THIS 15TH DAY OF JANUARY, 1905.
COMMISSIONER OF THE GENERAL LAND OFFICE.

JOHN H. WATSON, Commissioner of the General Land Office.
J. H. WATSON, Commissioner of the General Land Office.

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1905

Proposed Retail Open Access Revisions to SB 437 (S-2)

1. Enable access to MISO's three-year auction, but allow the MPSC to develop a "safety net" if the three-year auction is not implemented

- Page 69 lines 14 through page 73 line 26 – Replace proposed language with the following language:

SEC. 6W. (1) BY JUNE 2016, THE COMMISSION SHALL FORMALLY REQUEST THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR TO DEVELOP AND IMPLEMENT A RESOURCE ADEQUACY CONSTRUCT AND ASSOCIATED TARIFF TO RUN A MICHIGAN CAPACITY AUCTION WITH INPUT FROM RELEVANT STAKEHOLDERS INCLUDING, BUT NOT LIMITED TO, RESOURCE SUPPLIERS, UTILITIES, MUNICIPALLY OWNED UTILITIES, ALTERNATIVE ELECTRIC PROVIDERS, AND CUSTOMERS. THE REQUESTED IMPLEMENTATION DATE SHALL BE NO LATER THAN APRIL 2018.

(2) IF THE MICHIGAN CAPACITY AUCTION IS DEVELOPED BY THE END OF APRIL 2018, THEN ALL ELECTRIC PROVIDERS IN THIS STATE SHALL BE ABLE TO UTILIZE THE MICHIGAN CAPACITY AUCTION TO MEET ANY CAPACITY REQUIREMENTS ESTABLISHED BY THE COMMISSION FOR THE ELECTRIC LOAD SERVED IN THE TERRITORY FOR WHICH THE MICHIGAN CAPACITY AUCTION IS APPLICABLE.

(3) THE COMMISSION SHALL REQUEST THAT THE MICHIGAN CAPACITY AUCTION MEETS THE FOLLOWING CRITERIA:

(A) THE MICHIGAN CAPACITY AUCTION SETS A PRICE SIGNAL AT LEAST THREE YEARS OUT ON A ROLLING BASIS TO MEET THE LOCAL CLEARING REQUIREMENT AS DEFINED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR.

(B) THE MICHIGAN CAPACITY AUCTION WILL USE A DOWNWARD SLOPING DEMAND CURVE THAT REFLECTS THE RELIABILITY VALUE OF THE CAPACITY.

(C) THE MICHIGAN CAPACITY AUCTION HAS RULES INTENDED TO LIMIT MARKET POWER. THESE WILL INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:

- (i) A MUST-OFFER REQUIREMENT FOR ALL CAPACITY RESOURCES ELIGIBLE TO MEET THE LOCAL CLEARING REQUIREMENT IN THE APPLICABLE TERRITORY
- (ii) CONDUCT THRESHOLD AND IMPACT THRESHOLD TESTS FOR ECONOMIC WITHHOLDING CONSISTENT WITH THOSE IN THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR PLANNING RESOURCE AUCTION IN PLACE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.
- (iii) THESE RULES WILL NOT INCLUDE MINIMUM OFFER PRICE REQUIREMENTS OR RESTRICTIONS ON THE USE OF FIXED RESOURCE ADEQUACY PLANS.
- (D) EACH ELECTRIC PROVIDER HAS THE ABILITY TO UTILIZE A FIXED RESOURCE ADEQUACY PLAN IF IT OWNS OR HAS CONTRACTED FOR CAPACITY FOR A PORTION OR ALL OF THE DURATION COVERED BY THE MICHIGAN CAPACITY AUCTION.

(E) ELECTRIC PROVIDERS ARE NOT CHARGED AND CAPACITY RESOURCES ARE NOT PAID UNTIL THE DELIVERY YEAR, AND THEN THE ELECTRIC PROVIDERS PAY FOR THEIR SHARE OF THE RESOURCES NEEDED TO SERVE THEIR SHARE OF THE LOAD DURING THAT PLANNING YEAR.

(F) AN INDEPENDENT MARKET MONITOR WILL BE HIRED TO OVERSEE THE PROCESS AND ENSURE THAT THERE IS NO GAMING.

(G) THE COST OF ADMINISTRATION OF THE MICHIGAN CAPACITY AUCTION WILL BE RECOVERED FROM ELECTRIC PROVIDERS PURCHASING CAPACITY IN THE MICHIGAN CAPACITY AUCTION USING THE SAME COST ALLOCATION METHOD THAT IS USED BY THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR TO RECOVER THE COST OF ITS EXISTING PLANNING RESOURCE AUCTION AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

(H) THE CAPACITY PERFORMANCE REQUIREMENTS WILL BE NO GREATER THAN THE RESPECTIVE INDEPENDENT SYSTEM OPERATOR'S STANDARDS.

(I) THE INDEPENDENT SYSTEM OPERATOR WILL CONTINUE TO TAKE INTO ACCOUNT OUTAGE HISTORY AND GENERATOR TESTS OF RESOURCES.

(J) THE DOWNWARD SLOPING DEMAND CURVE USED FOR THE MICHIGAN CAPACITY AUCTION WILL INCLUDE A CAP ON THE AUCTION CLEARING PRICE THAT RESULT FROM THE AUCTION.

(K) ANY CAPACITY RESOURCE ELIGIBLE TO MEET THE LOCAL CLEARING REQUIREMENT AS DEFINED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR WILL BE ABLE TO BID INTO THE AUCTION.

(L) THE LOCAL CLEARING REQUIREMENT SHALL BE CALCULATED BASED ON PHYSICAL TRANSMISSION LIMITATIONS IN A MANNER CONSISTENT WITH THE CURRENT APPROACH IN THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR'S PLANNING RESOURCE AUCTION AS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

(3) IF A MICHIGAN CAPACITY AUCTION IS NOT DEVELOPED BY THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR BY THE END OF APRIL 2018 OR NOT ENOUGH CAPACITY IS BID INTO THE MICHIGAN CAPACITY AUCTION TO MEET THE CAPACITY OBLIGATION REQUIREMENTS DETERMINED BY THE INDEPENDENT SYSTEM OPERATOR, THEN THE COMMISSION SHALL HAVE THE AUTHORITY TO INCREASE RESOURCE ADEQUACY REQUIREMENTS ON ELECTRIC PROVIDERS IN THIS STATE AFTER A CONTESTED CASE IS CONDUCTED PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287.

(A) ALL REQUIREMENTS DETERMINED BY THE COMMISSION PURSUANT TO THIS SUBSECTION SHALL MEET THE FOLLOWING:

- (i) THE COSTS CAUSED BY THE REQUIREMENTS WILL BE ALLOCATED BASED UPON THE BENEFITS RECEIVED BY THE CUSTOMERS.
- (ii) THE REQUIREMENTS MUST ALLOW LOAD-SWITCHING BETWEEN ELECTRIC PROVIDERS IN A NON-DISCRIMINATORY MANNER.
- (iii) THE REQUIREMENTS MUST BE THE MOST COST EFFECTIVE, REASONABLE, AND PRUDENT TO PREVENT THE DEGRADATION OF RELIABILITY BELOW THE STANDARD SET BY THE INDEPENDENT SYSTEM OPERATOR.

(iv) THE REQUIREMENTS WILL PRESERVE THE ABILITY OF CUSTOMERS TO ACCESS THE RETAIL OPEN ACCESS MARKET.

(v) THE REQUIREMENTS WILL PROVIDE FAIR ACCESS TO ALL PARTICIPANTS THAT CAN REASONABLY PROVIDE POTENTIAL SOLUTIONS TO MEET THE REQUIREMENTS.

(vi) THE REQUIREMENTS WILL NOT EXPOSE INFORMATION CONSIDERED CONFIDENTIAL BY ELECTRIC PROVIDERS OR CUSTOMERS TO POTENTIAL COMPETITORS WHILE PROVIDING A REASONABLE OPPORTUNITY FOR DISCOVERY OF RELEVANT INFORMATION BY INTERESTED PERSONS.

(vii) THE REQUIREMENTS MUST INCLUDE DUE PROCESS THAT ENABLES ELECTRIC PROVIDERS AND OTHER INTERESTED PERSONS TO CHALLENGE THE REQUIREMENTS.

(B) ALL REQUIREMENTS IMPLEMENTED AS A PART OF THIS SUBSECTION WILL BE SUPERCEDED IF A MICHIGAN CAPACITY AUCTION IS SUBSEQUENTLY DEVELOPED.

- Page 74 line 22 through page 75 line 21 – Delete proposed language
- Page 76 line 27 through page 77 line 6 – Delete proposed language and add below language:

(C) "MICHIGAN CAPACITY AUCTION" MEANS A RESOURCE ADEQUACY CONSTRUCT AND THE ASSOCIATED TARIFF(S) DEVELOPED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR TO RUN A THREE-YEAR AUCTION FOR AT LEAST A PORTION OF THIS STATE.

- Page 77 line 7-14 – Revise proposed language as follows:

(D) "PLANNING RESERVE MARGIN REQUIREMENT" MEANS THE AMOUNT OF CAPACITY EQUAL TO THE FORECASTED COINCIDENT PEAK DEMAND THAT OCCURS WHEN THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOOTPRINT PEAK DEMAND OCCURS PLUS A RESERVE MARGIN THAT MEETS AN ACCEPTABLE LOSS OF LOAD EXPECTATION AS SET BY THE COMMISSION OR THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR.

(E) "PLANNING YEAR" MEANS JUNE 1 THROUGH THE FOLLOWING MAY 31 OF EACH YEAR THE PLANNING YEAR AS DEFINED BY THE APPLICABLE INDEPENDENT SYSTEM OPERATOR.

- Page 77 lines 15-23 – Delete proposed language

2. Make five-year reliability plans and MPSC forecast mandatory

- Page 73 line 27 through page 74 line 21 – Revise the proposed language as follows:

(7) NOT LATER THAN JULY 1 OF EACH YEAR, THE COMMISSION SHALL REPORT TO THE GOVERNOR AND LEGISLATURE A FORECAST OF THE CAPACITY RESOURCE ADEQUACY FOR A PERIOD OF NOT LESS THAN 5 YEARS.

THE REPORT REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE, FOR THE PLANNING YEARS COVERED UNDER SUBSECTIONS (1), (2), AND (3), A DETERMINATION BY THE COMMISSION OF THE PLANNING RESERVE MARGIN REQUIREMENT, LOCAL CLEARING REQUIREMENT FOR EACH LOCAL RESOURCE ZONE, AND PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENTS FOR EACH ELECTRIC PROVIDER IN THE STATE, IN MAKING A DETERMINATION FORECAST UNDER THIS SUBSECTION, THE COMMISSION SHALL CONSULT WITH AND CONSIDER ANY FINDINGS, PROJECTIONS, AND OTHER DATA OF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR. THE COMMISSION SHALL SPECIFICALLY DETERMINE WHETHER 105% OF THE CAPACITY RESOURCES NEEDED TO MEET THE LOCAL CLEARING REQUIREMENT FOR EACH LOCAL RESOURCE ZONE IS FORECASTED TO BE MET FOR EACH YEAR IN THE 5-YEAR FORECASTED PERIOD. A DETERMINATION MADE BY THE COMMISSION UNDER THIS SUBSECTION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTERS 4 & 5 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.292. IN A FORMAT DETERMINED BY THE COMMISSION, ALL ELECTRIC PROVIDERS AND UNREGULATED GENERATION PROVIDERS IN THIS STATE SHALL SUBMIT PRESCRIBED DATA NECESSARY FOR THE COMMISSION TO MAKE THE FORECAST AND DETERMINATIONS REQUIRED UNDER THIS SUBSECTION.

Modify "IRP Bypass" to apply to all energy providers.

Amend p. 57, line 9 after "proposals" through p. 58, line 8- 18, as follows:

"AN EXISTING ELECTRIC UTILITY, UNREGULATED GENERATION PROVIDER, OR UNREGULATED ELECTRIC PROVIDER IN THIS STATE CURRENTLY PRODUCING AT LEAST 100 MEGAWATTS OF ELECTRIC GENERATION CAPACITY RESOURCES THAT ~~SEEKS TO PROVIDE ELECTRIC GENERATION CAPACITY RESOURCES TO THE UTILITY THROUGH AN EXPANSION OF THAT ELECTRIC UTILITY'S OR UNREGULATED ELECTRIC PROVIDER'S EXISTING FACILITY~~ MAY SUBMIT THE A WRITTEN PROPOSAL REQUIRED UNDER SUBDIVISION (B) DIRECTLY TO THE COMMISSION FOR CONSIDERATION AS AN ALTERNATIVE TO THE ELECTRIC UTILITY'S INTEGRATED RESOURCE PLAN SUBMITTED UNDER THIS SECTION IF BOTH OF THE FOLLOWING APPLY:

(A) THE COMMISSION DETERMINES THAT THE ELECTRIC UTILITY, UNREGULATED GENERATION PROVIDER, OR UNREGULATED ELECTRIC PROVIDER MEETS THE QUALIFYING PERFORMANCE STANDARDS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY, CREDITWORTHINESS, PAST PERFORMANCE, AND OTHER CRITERIA ESTABLISHED BY THE COMMISSION~~UTILITY FOR ITS REQUESTS FOR PROPOSALS UNDER THIS SUBSECTION.~~

(B) ~~NOT MORE THAN 90 DAYS BEFORE THE ELECTRIC UTILITY ISSUES ITS REQUEST FOR PROPOSALS UNDER THIS SUBSECTION, THE ELECTRIC UTILITY, UNREGULATED GENERATION PROVIDER, OR UNREGULATED ELECTRIC PROVIDER SUBMITTED A WRITTEN PROPOSAL TO THE ELECTRIC UTILITY TO PROVIDE GENERATION CAPACITY RESOURCES TO THE ELECTRIC UTILITY THROUGH AN EXPANSION OF ITS EXISTING FACILITY AND THAT WRITTEN PROPOSAL WAS REJECTED OR NOT ACTED UPON BY THE UTILITY. TO THE EXTENT PRACTICABLE, EACH ELECTRIC UTILITY IS ENCOURAGED, BUT NOT REQUIRED, TO PARTNER WITH OTHER ELECTRIC PROVIDERS THAT EITHER ARE OR ARE WILLING TO LOCATE IN THE SAME LOCAL RESOURCE ZONE AS THE UTILITY'S LOAD IS SERVED IN THE DEVELOPMENT OF ANY SUPPLY-SIDE GENERATION CAPACITY RESOURCES INCLUDED AS PART OF ITS INTEGRATED RESOURCE PLAN.~~

Amendments SB 437 (S-2)

Revenue Decoupling

1. Amend page 11, line 24 by deleting "SHALL" and inserting "MAY"
2. Amend page 11, line 26 by deleting "PROJECTED"
3. Amend page 12, line 2 by inserting after the word "DEMONSTRATE" the words "THE UTILITY IS NOT EARNING OVER ITS AUTHORIZED RATE OF RETURN DURING THE MOST RECENT TWELVE MONTHS FOR WHICH DATA IS AVAILABLE AND"
4. Amend page 12, after line 23 by adding new section "(D) IF A UTILITY RECEIVES A REVENUE DECOUPLING MECHANISM THE COMMISSION SHALL AT THE SAME TIME, OR IN THE NEXT GENERAL RATE CASE FOR THAT UTILITY, REDUCE THE AUTHORIZED RETURN ON COMMON EQUITY TO RECOGNIZE THE REDUCED RISK TO THE UTILITY BY HAVING THE REVENUE DECOUPLING MECHANISM .
5. Amend page 12, line 24 to page 13, line 22 by deleting subsection (13)

Lifting Cap for Schools and Universities Amendment

1. Amendment for SB 437(2): Amend p. 120, lines 7-13, by deleting the word "If" on line 7 and striking out the remaining the sentence through the word "year" on line 13.

1. Amend p. 120, following line 7, by inserting: "NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PUBLIC SCHOOL MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THAT CUSTOMER WAS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T. AS USED IN THIS SUBDIVISION, "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN SECTION 5 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.5. (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PUBLIC SCHOOL ACADEMY OR NONPUBLIC SCHOOL MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THAT CUSTOMER WAS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T. AS USED IN THIS SUBDIVISION, "PUBLIC SCHOOL ACADEMY" AND "NONPUBLIC SCHOOL" MEAN THOSE TERMS AS DEFINED IN SECTION 5 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.5. (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A STATE PUBLIC UNIVERSITY, COMMUNITY COLLEGE, OR INDEPENDENT NONPROFIT DEGREE-GRANTING COLLEGE OR UNIVERSITY LOCATED IN THIS STATE MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THAT CUSTOMER WAS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T. AS USED IN THIS SUBSECTIONS (1)-(3): (i) "COMMUNITY COLLEGE" MEANS THAT TERM AS DEFINED IN SECTION 1311B OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1311B. (ii) "STATE PUBLIC UNIVERSITY" MEANS THAT TERM AS DEFINED IN SECTION 1311B OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1311B. (4) A RETAIL CUSTOMER PURCHASING ITS ELECTRICITY UNDER SUBDIVISION (1) through (3), SHALL SUBMIT AN AFFIDAVIT TO THE COMMISSION AFFIRMING THAT THE CUSTOMER MEETS AT LEAST 1 OF THE CRITERIA SET FORTH IN SUBDIVISION (1), (2) OR (3). ANY CHALLENGES TO THE AFFIDAVIT OR THE ELIGIBILITY OF THE RETAIL CUSTOMER SHALL BE SUBMITTED TO THE COMMISSION WITHIN 10 DAYS OF THE AFFIDAVIT BEING FILED. IF THE COMMISSION FINDS REASONABLE CAUSE FOR THE CHALLENGE, IT SHALL COMMENCE AN INVESTIGATION, HOLD HEARINGS, AND ISSUE ITS FINDINGS AND ORDER ON THE MATTER UNDER THE CONTESTED CASE PROVISIONS OF CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287." and relettering the remaining subdivision.

